

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC.,)
PLATINUM MOTORS, INC.,)
MATTINGLY AUTO SALES, INC.,)
YOUNG EXECUTIVE MANAGEMENT &)
CONSULTING SERVICES, INC.,)
Individually, and on behalf)
of other members of the)
general public similarly)
situated,)
Plaintiffs,)
-v-) Docket No.
1:14-cv-01589-TWP-DKL
COX ENTERPRISES, INC.,) Class Action
COX AUTOMOTIVE, INC.,)
NEXTGEAR CAPITAL, INC. f/k/a)
DEALER SERVICES CORPORATION,)
successor by merger with)
Manheim Automotive Financial)
Services, Inc., and JOHN WICK,)
Defendants.)

The deposition upon oral examination of **STUART LABAUVE**, a witness produced and sworn before me, Tami L. Scott, Notary Public in and for the County of Marion, State of Indiana, taken on behalf of the Plaintiffs at the offices of Bose, McKinney & Evans, 111 Monument Circle, Suite 2700, Indianapolis, Marion County, Indiana, on November 9, 2016, at 9:00 a.m., pursuant to the Federal Rules of Civil Procedure.

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1 A Realtime information.

2 Q They focus on that, the company does?

3 A They want the information accurate. I mean, we do
4 have the ability to log it up afterwards, but I do
5 it when I'm there.

6 Q Okay. And what type of information would you put in
7 there besides the identifiers of who it is and who
8 you talked to?

9 A Yeah. The reason why I was there, if I accomplished
10 what I set out to accomplish, if I got any referrals
11 from the dealer, if I picked up any units to floor.

12 Q Okay.

13 A If I cleared an audit.

14 Q Okay. Were you under any type of requirement to,
15 quote, "touch" or see every existing client at least
16 once per month?

17 A They ask us to do it within a 30- to 60-day period,
18 depending on your market.

19 Q And would that involve both physically going out to
20 the exact dealership, as well as maybe seeing that
21 dealership at an auction?

22 A They count it as only seeing them at the dealership.

23 Q What if you would see somebody at an auction?

24 A Yeah, I can have conversations with them, but I
25 don't log them up.

1 Q Have you ever logged a conversation that you had
2 with a dealer at an auction?

3 A No.

4 Q Are you sure about that?

5 A We don't get credit for those, so I never made a
6 habit of doing those.

7 Q You would input, though, that you went to a
8 particular auction on a particular day, though;
9 correct?

10 A Yes, sir.

11 Q And what type of information would you put on an
12 auction visit?

13 A Usually just that I attended the auction that day,
14 and if there was any promo we were running, I would
15 put, you know, for the sales blitz we had or
16 whatever the circumstance might be, but normally
17 just that I attended the auction.

18 Q You mentioned audits before. Do you also conduct or
19 oversee site audits for customer dealers?

20 A Yes, sir.

21 Q You did that for DSC as well as NextGear; is that
22 correct?

23 A Yes, sir.

24 Q Did you document those contacts and those efforts?

25 A Yes, sir.

1 Q How is that recorded? Same way?

2 A Yeah. Well, Salesforce, and then our collections
3 management in Discover.

4 Q Did the computer system change from DSC to NextGear?

5 A We still operate off of Discover, which was both.

6 Q Okay. So that's a no? No change?

7 A No, sir.

8 Q And we've mentioned before, we've both discussed the
9 term floorplan and floorplanning. Is that a -- are
10 those phrases commonly used in the used car
11 industry?

12 A Yes, sir.

13 Q And explain your understanding of the term
14 floorplanning.

15 A It's setting up a line of credit for a dealer to buy
16 inventory.

17 Q From whom?

18 A It can be from auctions, from wholesalers, from
19 individuals, trade-ins.

20 Q And in turn, who pays the auction as part of the
21 floorplanning?

22 A NextGear does.

23 Q What is the KO book?

24 A Called the knockout book.

25 Q What is it?

1 A If there is a dealer that defaults either with a
2 floorplan or writes a bad check to an auction,
3 Auction Insurance is notified.

4 Q What is a result for a customer dealer that is
5 placed in the KO book?

6 A Most floorplan companies won't give a line of
7 credit, and it probably becomes on a cash basis at
8 an auction.

9 Q So it affects a customer dealer both with floorplan
10 companies and the auctions itself; correct?

11 A As far as I know, yes, sir.

12 Q Have you ever caused any of your customers to be
13 listed in the KO book?

14 A No, sir.

15 Q Have you ever referred to corporate any of your
16 customer dealers for placement in the KO book?

17 A No, sir.

18 Q You've never had a customer dealer default?

19 A I have.

20 Q So what do you do?

21 A Once I secure any inventory and get any bills of
22 sales or disposition of all cars, our risk
23 department takes it from there.

24 Q As a man on the ground, though, you're a part of the
25 collection effort; correct?

1 A Yes, sir.

2 Q How many customers have you referred to your -- risk
3 management, you said?

4 A Yes, sir.

5 Q -- your risk management division for placement in
6 the KO book?

7 A None.

8 Q None. How many of your customer dealers have been
9 placed on the KO book?

10 A I don't know.

11 Q Less than five? More than five?

12 A I have no idea how many. Once it goes to our risk
13 department, I don't deal with it anymore.

14 Q Well, you see those customers --

15 A Yes, sir.

16 Q -- in the future; correct?

17 A Yes, sir.

18 Q Right? And at some point, have any of those
19 customers said, well, geez, I'm in the KO book now,
20 Stuart? Can you help me?

21 A One time.

22 Q Who said that?

23 A A guy by the name of Beau Guidry. I think he had
24 Affordable Auto Sales, and he was placed in the KO
25 book for a bounced check, and we allowed him to --

1 he got himself out, and we allowed him to work out
2 of the floorplan.

3 Q And he came to you for help?

4 A Yes, because he wanted to pay us off.

5 Q Because while he was in the KO book, how was he
6 adversely affected?

7 A His floorplan with us was -- he didn't have any
8 available credit with us anymore.

9 Q How many customer dealers do you believe -- I know
10 this is just a general ballpark number -- do you
11 believe that you have either signed up or
12 supervised, so to speak, since your employment in
13 2007? More than a thousand?

14 A No.

15 Q More than 400?

16 A I couldn't give you an exact figure. I've never
17 looked at that.

18 Q The Discover system, though, would contain that
19 information; correct?

20 A Yes. I could probably get it.

21 Q So someone from corporate could certainly, and
22 correct me if I'm wrong, type in Stuart LaBauve and
23 maybe have an account history for you?

24 A I believe so.

25 Q Okay. And would that show both the dealer's name,

1 as well as the account number and then other
2 activity?

3 A Yes, sir.

4 Q And that would be available for every account
5 executive; is that correct?

6 A Yes, sir.

7 Q How soon after a default would the risk management
8 division of NextGear or DSC take action to place
9 someone in the KO book?

10 A I don't know.

11 Q Less than a week? More than a week?

12 A I guess it depends on the circumstances with the
13 dealer and the particular situation he's in.

14 Q Now, once your risk management division of either
15 DSC or NextGear would place someone in the KO book,
16 at some point you had to receive notification of
17 that; correct?

18 MR. VINK: I'm going to object to the form of
19 the question. That mischaracterizes his testimony.
20 There's been no testimony that anybody at NextGear
21 places somebody in the KO book. His testimony was
22 actually the opposite.

23 Q You mentioned -- I'll rephrase.

24 You mentioned Auction Automobile, Automobile
25 Auction Insurance?

1 A Yes.

2 Q Who is that?

3 A They are a third-party company --

4 Q Right.

5 A -- that the -- they insure the dealerships at the
6 auctions over bad checks.

7 Q Right. So you have a customer, okay -- follow me
8 here -- you have a customer; something happens, bad,
9 right?

10 A *(Nodding head affirmatively.)*

11 Q You've got to say yes or no.

12 A Yes.

13 Q All right. The risk management division of either
14 DSC/NextGear then does something; correct?

15 A Yes.

16 Q And then how do you know -- at some point, you must
17 find out this existing customer that you're supposed
18 to, quote, "touch" once a month is no longer in good
19 standing with the company?

20 A *(Nodding head affirmatively.)*

21 Q How do you know that?

22 A Because when we see the signs of a dealer gone bad,
23 my regional director is involved; my risk department
24 is involved before the default ever occurs, knowing
25 what's going on; and then if there is no end in

1 sight with it, that's when they default the account.

2 Q Right. And so then what are you told from corporate
3 at that point when the relationship ends, so to
4 speak?

5 A If there is any inventory left on the floorplan,
6 it's to secure that, get it to an auction. If there
7 is any sold units, get bills of sales on those
8 units.

9 Q And when you said the dealer goes bad, the dealer
10 goes bad, at that point, or at some point, he is
11 placed -- he or she is placed in the KO book?

12 A I don't know when that happens.

13 Q You don't continue to do business with that person;
14 correct?

15 A No, sir.

16 Q You stop seeing them; correct?

17 A Yes, sir.

18 Q Have you seen some of those people, though, at other
19 auctions?

20 A I still do.

21 Q You still do. And give us a for instance.

22 A There is no communication between me and them.

23 Q Okay. How is their ability to work at an auction or
24 to attend an auction or buy from an auction affected
25 once they're in the KO book, from your

1 understanding?

2 A I believe the auctions place them on a cash-only
3 basis.

4 Q And how many customer dealers would you estimate
5 that have, quote, "gone bad"?

6 A I don't know.

7 Q Would you say less than 50? More than 50?

8 A I can't give you an exact number.

9 Q Well, certainly, this is your portfolio we're
10 discussing; correct?

11 A Correct.

12 Q And over time, your portfolio changes; correct?

13 A Uh-huh. Yes, sir.

14 Q New additions; right?

15 A Yes, sir.

16 Q And customer dealers going bad; correct?

17 A Yes, sir.

18 Q These are people that you actually, in addition to
19 seeing them at the auction, you actually are
20 mandated to see them at least once every 60 days,
21 correct, at their dealership; correct?

22 A Yes, sir.

23 Q So these are people that you know in person;
24 correct?

25 A Yes, sir.

1 Q You know their first name, you know their last name?

2 A Yes, sir.

3 Q You know where they work?

4 A Yes, sir.

5 Q How many of those people do you stop seeing when it
6 goes bad?

7 A Stop seeing them at their dealership?

8 Q Correct.

9 A Once a default happens and we're clear of any
10 inventory, I don't see them; I don't visit the
11 dealership.

12 Q Right. So give me a total number; of course, an
13 estimate.

14 A Maybe 50.

15 Q Okay. Just in that region?

16 A When I first started, I covered the whole state of
17 Louisiana.

18 Q So that includes both that particular geographic
19 region, as well as what you have now; correct?

20 A Yes, sir.

21 Q When is the last time you had a, quote, "dealer go
22 bad" as we sit here today, September 9th, 2016?

23 September. I'm sorry. November.

24 MR. VINK: Feels like September.

25 Q A little off.

1 A A dealer go bad? I guess just two months ago, a
2 month ago.

3 Q Is that person or that company any longer a customer
4 dealer for NextGear?

5 A They are still a customer.

6 Q Have they been placed on some type of restrictions?

7 A They don't have available credit and they are on
8 certified funds to pay us.

9 Q You mentioned earlier the risk management division;
10 is that right?

11 A Yes, sir.

12 Q Of NextGear or DSC. Was it the same under both?

13 A Risk department, yes.

14 Q Risk department. Okay. And is that housed here in
15 Carmel, Indiana?

16 A Yes, sir.

17 Q And is the Auto Auction Insurance Company, the
18 third-party company that you mentioned before, is
19 that located in Birmingham, Alabama?

20 A I don't know where they're located.

21 Q The KO book, what you called -- I guess it is called
22 the knockout book, is this some super secret
23 process, or is this pretty widely known within
24 NextGear and DSC?

25 A I'm sure it's widely known.

1 Q In addition to working with this third-party
2 company, the Auto Auction Insurance Company that you
3 mentioned earlier, and the KO book, does NextGear,
4 obviously, work with its sister company, Manheim
5 Auto Auctions? Do you interface with those
6 individuals?

7 A Yes, sir.

8 Q And when someone is placed in the KO book, in
9 addition, are they also banned from Manheim
10 Auctions?

11 A I don't know what their policies are.

12 Q The customer dealers, those approximately 50,
13 ballpark, 50 customer dealers, do you still see them
14 at Manheim Auto Auctions?

15 A I can't speak to that. I don't know. I haven't
16 attended Manheim in 30 days or so.

17 Q Okay. Well, prior to that, people that have --
18 dealers that have -- you've ended your relationship
19 with, or NextGear has, the dealers that you don't go
20 see anymore, do you see them walking around at
21 Manheim Auction?

22 A There are dealers that I don't do business with that
23 I see walking out there. I know they defaulted.
24 Where they stand with the KO book, I don't know.

25 Q Manheim would be able to tell us that information;

1 A Yes, sir.

2 Q Where did Mr. O'Dell come from?

3 A I don't know his work history.

4 Q Did he come from Manheim?

5 A Which? When?

6 Q I don't know. I'm asking you.

7 A You're saying he left, so I don't know.

8 Q Okay. Flip to 5056 and 5057, if you could. It's
9 the last couple of pages, or third and fourth pages.

10 A Yes, sir.

11 Q Do you see this document entitled Contract Quick
12 Facts?

13 A Yes.

14 Q That's 5056. The next page, though, is upside down;
15 is that right?

16 A Yes, sir.

17 Q That's 5057?

18 A Yes, sir.

19 Q Do you recognize the signature on 5057?

20 A No, sir.

21 Q You don't recognize that?

22 A No, sir.

23 Q It's not yours?

24 A I don't believe so, no, sir.

25 Q Okay. Fair enough. Flip back to the second page,

1 and that's 5035 of this document, and at the top,
2 it's entitled Demand Promissory Note and Security
3 Agreement. Do you see that Mr. LaBauve?

4 A Yes.

5 Q Again, Dealer Services Corporation?

6 A Yes, sir.

7 Q Carmel, Indiana?

8 A Yes, sir.

9 Q The definition of 1(a), the term "Advance," again,
10 could you please read that into the record?

11 A "...shall mean any loan or payment in any amount
12 made pursuant to the note by DSC to dealer or on
13 dealer's behalf to any third party."

14 Q Same as before in the 2007; correct?

15 A I would have to --

16 MR. VINK: I'll object to the form. It's
17 actually not the same.

18 Q Well, you go ahead and look at it, Mr. LaBauve, and
19 tell me the difference, if there is one.

20 A The words "in any amount made" has been added.

21 Q And before -- that's 2011; correct, Exhibit 3?

22 A Yes, sir, 2011.

23 Q That's the only change to that term; correct?

24 A To that 1(a) definition, yes, sir.

25 Q Now, when you would have a, let's say, 2007,

1 contract, this standard form, you would basically
2 have stacks of these with you, or would they be sent
3 by corporate per individual customer applicant?

4 A We would print them out.

5 Q Where?

6 A From our printer.

7 Q Like in your office?

8 A Yes, sir.

9 Q And you would print out standard forms, or would it
10 be after someone would apply?

11 A Blank forms.

12 Q Blank forms. And would you carry these with you?

13 A Well, this, we would take the application, get all
14 the documentation, send it in. When lending had a
15 decision and a contract, then we would get this
16 form.

17 Q And you'd go ahead and print that out and go back to
18 the dealer and get them to sign it; correct?

19 A Yes, sir.

20 Q And you would use whatever they sent you; correct?

21 A Yes, sir.

22 Q They, being corporate; correct?

23 A Yes, sir.

24 Q These contracts that you would present to the
25 customer dealer after they would apply and be

1 approved, this was not something that you would
2 negotiate with the customer; correct?

3 A We could discuss terms.

4 Q Right. And the terms being, what, the 60/30/30
5 terms?

6 A Depends on what they were interested in would fit
7 for their business model that they told us about.

8 Q Right. You wouldn't -- I'm sorry -- on like
9 Exhibit 3 and Exhibit 2, they wouldn't have -- the
10 customer dealer wouldn't have the option to go, you
11 know what, I want to change this definition to
12 advance, or I want to change that definition;
13 correct?

14 A Yes, sir.

15 Q This was a take it or leave it; correct?

16 A Yes, sir.

17 Q The only options they would have would be what --
18 the Term Sheet numbers; correct?

19 A Yes, sir.

20 Q And what options were those, again?

21 A We had different options of terms we could do.
22 Depends on the line of credit they were applying
23 for.

24 Q If I was a customer dealer back in 2007, could I say
25 Stuart, 2 percent, that's what I'm willing to pay.

1 Did he have that option?

2 A If his credit was strong enough and if there was --
3 on the terms, yes, we could negotiate some of that
4 stuff.

5 Q Did you often negotiate interest rates?

6 A We could if we needed to.

7 Q How many times have you changed an interest rate?

8 A I couldn't give you an exact number.

9 Q Less than five?

10 A It was more than that.

11 Q Less than ten?

12 A More than that.

13 Q How many?

14 A I don't know. We've talked to the number we did
15 before. I don't know how many, you know, sales that
16 I've done, and I don't know how many contract
17 terms -- I can't tell you all the terms because in
18 the middle of contracts, we can change terms as
19 well.

20 Q The records would show whatever they are; correct?

21 A Yes, sir.

22 Q But as far as the contract itself, the customer
23 didn't have the option of altering in any fashion?

24 A No, sir.

25 Q Correct?

1 A Correct.

2 Q It was a take it or leave it; correct?

3 A Yes, sir.

4 Q Still on Exhibit 3, go ahead and flip to, if you
5 could, page number 5054. What's the title of this
6 document?

7 A Dealer Services Corporation ACH Authorization and
8 Request Withdrawal or Deposit.

9 Q And does this record, this sheet of paper, does it
10 document that DSC would be and did electronically
11 withdraw money from customer dealers' checking
12 accounts?

13 A Yes.

14 Q And as you testified earlier, DSC has customer
15 dealers in every state of the United States;
16 correct?

17 A I believe so, yes, sir.

18 Q And DSC has always been headquartered in Carmel,
19 Indiana; correct?

20 A Yes, sir.

21 Q And that remained the same after the merger with
22 MAFS; correct?

23 A Yes, sir.

24 Q So these withdrawals for your contracts in the state
25 of Louisiana would come from Carmel, Indiana, and

1 they would withdraw money from customer dealers in
2 Louisiana, let's say; is that correct?

3 A They would withdraw money from any customer that
4 owed money.

5 Q Wherever their banks were; correct?

6 A Yes.

7 Q And for instance, for your dealers, those banks were
8 in the state of Louisiana; correct?

9 A Depends on what -- I don't know where they --
10 different dealers had different banks. Some had
11 online banking that could be out of state.

12 Q All of your dealers didn't have banks inside the
13 state of Indiana, though; correct?

14 A No, sir.

15 Q So when DSC would take money from a customer dealer,
16 it would cross state lines?

17 A I'm sure, yes, sir.

18 Q All right. They don't have -- this sheet of paper
19 doesn't have numbers, but you see the bullet points,
20 so to speak?

21 A Yes, sir.

22 Q Look at the second bullet point. Do you see that?

23 A Yes, sir.

24 Q Okay. And this bullet point, you correct me if I'm
25 wrong, provides that DSC may initiate, and that's a

1 quote, right, DSC may initiate a payment -- I'll
2 just go ahead and read it -- "DSC may initiate a
3 required payment from the designated account on or
4 after the first business day following the date that
5 such amount would come due and owing under the
6 note." Is that correct?

7 A Yes, sir.

8 Q So when you take this provision in this document
9 here that says DSC is going to initiate, it may
10 initiate that withdrawal; right?

11 A Yes, sir.

12 Q After the payment becomes due; correct?

13 A Yes, sir.

14 Q Flip back and combine that with the term "Advance"
15 on page one, and that's 5035. When you combine
16 those two statements in this contract package, DSC
17 was allowed to withdraw the money only after DSC
18 made a loan or payment either to the dealer or on
19 the dealer's behalf to a third party; correct?

20 MR. VINK: I'm going to object to the form of
21 the question. Clearly calls for a legal conclusion,
22 as this is a lay witness, not a lawyer.

23 Q From your understanding, not the legal conclusion,
24 but this is the contract you sold; correct?

25 A Repeat it, the question, please.

1 MR. JURKIEWICZ: Sure.

2 MR. COMAN: Go off the record.

3 *(A recess was taken.)*

4 BY MR. COMAN:

5 Q Going back on the record here. Have you had a
6 chance to review Exhibit No. 3, Mr. LaBauve?

7 A Yes, sir.

8 Q And as to my question, when you look at the ACH
9 authorization on 5054 stating that DSC is allowed to
10 extract the money from a customer dealer when the
11 amount becomes due and owing under the note and you
12 combine that with the definition of the term
13 "Advance" on page 5035, that is the time period or
14 the occurrence of when DSC is allowed to pull money
15 out of a customer's account after an advance is made
16 on their behalf; correct?

17 A Yes, sir.

18 MR. VINK: Object to the form of the question.
19 Again, it calls for legal conclusions. You can
20 answer to the extent you feel comfortable opining a
21 legal answer.

22 Q What was your answer?

23 A When a dealer wants to floor a car with us, when he
24 tells the auction, floor it with NextGear, we
25 consider it a loan. A loan is generated that day

1 and an advance will be made on that loan.

2 Q Okay. Originally while your counsel was objecting
3 before that answer, your answer was yes, and then
4 that was your explanation; is that correct?

5 A Okay. Rephrase it.

6 Q Okay. When we look at those two pieces of paper in
7 this contract package that's presented to a customer
8 dealer back in 2011, again, when the customer takes
9 the car from the auction, tells the auctioneer, put
10 it on DSC's floorplan, leaves with the car, he or
11 she leaves with the car, okay, DSC is only allowed
12 to start taking those wires, those monies out of the
13 customer's account after the advance is made;
14 correct?

15 MR. VINK: Objection. Again, calls for a legal
16 conclusion, asking him to construe legal documents.

17 Q And your answer is?

18 A When that car is floored, we consider it a loan, and
19 an advance will be made on that loan for that
20 dealer.

21 Q Okay. Where is that contained in this document?
22 You've had 15 minutes to review it. Did you see it
23 anywhere?

24 MR. VINK: Same objection. Again, asking a lay
25 witness for a legal opinion.

1 A That's my understanding of when we're flooring cars,
2 the advance is going to be made when the customer
3 tells us he wants to floor, make a loan with
4 NextGear on that -- DSC on that unit.

5 Q I think we're in agreement of what happens. I'm
6 talking about this contract, though. What you said,
7 where is what you just said in this contract
8 somewhere?

9 MR. VINK: Same objection. It's also been
10 asked and answered.

11 Q Where is that in there?

12 A That's my understanding of the contract.

13 Q Did you find it anywhere?

14 A Of --

15 Q As best you could tell?

16 A In --

17 MR. VINK: Same objection. Can I just have a
18 standing objection to this whole line of questions?

19 MR. COMAN: Yes. That's fine.

20 MR. VINK: It's inappropriate asking him for a
21 legal conclusion.

22 A Yeah. When we floor the car, we consider it a loan,
23 and an advance is going to be made on it.

24 Q Did you find what you just said in that document,
25 Exhibit No. 3, yes or no?

1 MR. VINK: If you feel comfortable answering
2 the question.

3 A The definition of advance says a loan made, a loan
4 or payment.

5 Q It says, for the record, "'Advance' shall mean any
6 loan or payment in any amount made pursuant to this
7 note by DSC to dealer or on dealer's behalf to any
8 third party." And a loan or payment is money;
9 correct?

10 A A loan is the car that we're being -- that is being
11 floored.

12 Q But the money is not paid by DSC to the auction;
13 right?

14 A I don't know when the money gets paid to the
15 auctions.

16 Q Okay. Sitting here now, you know when it's paid;
17 correct?

18 A No, sir, because different auctions get paid at
19 different times, so I can't speak to any one
20 auction.

21 Q The floorplan date is not the loan date, though;
22 correct?

23 A The floorplan date is the sale date.

24 Q Sale to the customer dealer; correct?

25 A If we're talking auction, from the auction to the

1 customer.

2 Q Right. That's not the date of when DSC or NextGear
3 pays the auction, though; right?

4 MR. VINK: Objection. Asked and answered. You
5 can --

6 A Like I said, I don't know when loans get paid.

7 Q Even as you sit here right now, you don't know when
8 NextGear is paying auctions?

9 A On a --

10 MR. VINK: Same objection. He's answered the
11 question. He said it varies.

12 MR. COMAN: Right.

13 MR. VINK: It's been answered.

14 Q Thank you. But my question is as you sit here
15 today, not talking about the 2011 contract, but as
16 you sit here today, you're not testifying that the
17 floor date, i.e., the date of the auction, is the
18 same date that NextGear is paying the auction on
19 behalf of the dealer?

20 A I don't know when the auctions get paid.

21 Q You haven't inquired as to that transaction, that
22 sequence?

23 A No, sir. I mean, different auctions get paid at
24 different times. I don't know when that transaction
25 happens. I have, in a week's time, I might have 120

1 units that are floored, maybe 200. I don't know
2 when they get paid.

3 Q We will get back to that in a minute. As far as
4 your process for signing up a customer dealer, and
5 we're looking back at both Exhibit 2 from 2007, as
6 well as Exhibit 3 from 2011, you sold those
7 contracts on a daily and weekly basis; is that
8 correct?

9 A Yes, sir. I did sign up new dealers.

10 Q Okay. That's a -- would you state that that was, or
11 estimate that that was a large part of your
12 activity?

13 A In the beginning, yes, sir.

14 Q Okay. Did you have a script to follow for this
15 process?

16 A No, sir.

17 Q Did DSC provide you with any materials that aided
18 you or gave you some type of substance that you were
19 to pitch or relay to a potential customer dealer?

20 A We ran through some role-play scenarios on selling.

21 Q When you would approach a potential customer with
22 the application, what would you tell the potential
23 customer during that process?

24 A It depends on if he was interested or not interested
25 in signing up.

1 Q If he was not interested, I guess that's a short
2 conversation.

3 A Well, I mean, we have objections we try to overcome.

4 Q Okay. And what would you tell -- what were some of
5 the typical objections or issues that would come up?

6 A They use their own cash, or it was too expensive.

7 Q And in response, what was your counter?

8 A We would try to show them, you know, their cash
9 might be limited, so the floorplan can add
10 additional capital for them to purchase inventory.
11 And when they say it was too expensive, we would go
12 through a scenario of what an actual cost of a car
13 would be for the time frame that they have it on
14 floor when they sell -- before they sell it.

15 Q Would that discussion involve when interest and
16 curtailment fees are applied?

17 A Uh-huh.

18 Q Tell us about that.

19 A That when the car, you know, car is purchased and
20 floored, the clock starts that day on the
21 curtailment fee to the curtailment date, and
22 interest and insurance at the same time, if they
23 elected our insurance, accrued on a daily basis.

24 Q Did you ever tell them in addition to that's the
25 date their clock starts ticking, did you tell them

1 that that's not necessarily the date that your clock
2 starts ticking?

3 A Our clock, meaning?

4 Q Paying the auction.

5 A Like I say, it just depends on which auction they
6 bought it from and when we pay it, but no, that
7 conversation didn't come up.

8 Q Once someone would execute or fill out an
9 application, as evidenced on the first page of both
10 Exhibits 2 and 3, what would you do with that
11 application?

12 A Send it in to our lending department.

13 Q And once a customer dealer was approved, what did
14 you do next?

15 A Convey the approval to them and make sure we had all
16 relevant documents.

17 Q As a ballpark, with the several hundred, whatever
18 number it is that you've signed up, or -- strike
19 that.

20 Of the applications that you've put in or
21 submitted on behalf of dealers, how many, what
22 percentage of those applications would you estimate
23 have been rejected by corporate?

24 A I don't know. I can't give you a figure on that.

25 Q Less than 5 percent? More than 5 percent?

1 A Probably more than 5 percent.

2 Q More than 10?

3 A Possibly. I mean, I don't know a figure. I've
4 never looked at that number.

5 Q Is it an occurrence that takes place on an often
6 basis, or is it something that's more rare?

7 A I'm not involved in the sales as much currently, so
8 I don't keep up with it as much.

9 Q Back then, 2011?

10 A 2011? One a month, possibly.

11 Q Okay. Fair to say that it's somewhat rare, given
12 the numbers of people you were interacting with at
13 that time?

14 A Not rare, but, you know, we would find ways to --
15 you know, maybe we will not give them -- not lend
16 them as much based on their credit, so it might
17 not -- we might have turned it down, but instead we
18 will work with them for \$10,000 and let them prove
19 themselves to us.

20 Q You would work to sign the customer up as best you
21 could; correct?

22 A Yes, sir.

23 Q So how many would you estimate that, regardless
24 of -- not a temporary denial, but like that's it,
25 we're not doing business with John Doe, how often

1 would that take place? Rare or often?

2 A I would say it's -- it was -- I can't give you a
3 number. I mean, it wasn't rare, but it wasn't often
4 either. It was --

5 Q Once someone was approved and -- once a dealership,
6 a customer dealer was approved and you would bring
7 to them the contract, would you review the contract
8 with the customer?

9 A Yes, sir.

10 Q What did you tell the customer during the
11 contract-signing process?

12 A By that time, we had gone through most scenarios of
13 how the floorplan worked as far as when you buy a
14 car, when you floor it, how the payments come due,
15 everything, so this we would read, we would go over
16 everything again and sign and go through the term
17 plans and the payments and the audits and everything
18 like that.

19 Q Was there some pamphlet or guide on what you were
20 supposed to tell or not tell?

21 A No.

22 Q Was there a lawyer present?

23 A No, sir.

24 Q Okay. So when your counsel was objecting to --
25 before when we were talking about this contract,

1 this is something that you sold several hundred
2 times on your own; correct?

3 A Yes, sir.

4 Q Okay. No one helped you; right?

5 A No, sir. It was me with the customer.

6 Q You with the customer, right. And you would sit
7 down, and that same contract that we've looked at,
8 you would literally go through it with that
9 particular customer?

10 A Yes, sir.

11 Q Okay. Did you keep notes or upload notes on
12 meetings with customers?

13 A No, sir.

14 Q You would certainly keep notes, though, on, hey, I
15 signed up John Doe today; correct?

16 A Well, it depends on the time frame. This was before
17 Salesforce and all that.

18 Q When did Salesforce come into existence, ballpark?

19 A Earlier this year.

20 Q Before that, how would your supervisor or corporate,
21 the corporate office know that you had signed up
22 John Doe on a particular date?

23 A Because we would send in the contracts for
24 activation.

25 Q And that would exist as the evidence that, hey, I

1 signed up John Doe?

2 A Yes, sir.

3 Q Did you maintain an electric calendar, like a
4 digital calendar, like on Office Outlook or
5 something like that?

6 A No, sir.

7 Q You had no digital calendar?

8 A The only thing would be if there was a conference
9 call scheduled, they would put it on my calendar,
10 but other than that, no, sir.

11 Q How would that show up?

12 A They have access to our Outlook calendars.

13 Q Okay. So you do use Outlook?

14 A Yes, sir.

15 Q You used Outlook under DSC as well?

16 A I believe so, yes, sir.

17 Q So whatever appointments you had with customers,
18 auction houses, whatever it would be, would be
19 maintained on that Outlook calendar?

20 A No, sir.

21 Q Where would that be maintained?

22 A If I had things to do, I still use pen and paper on
23 to-do stuff.

24 Q You kept like a monthly calendar?

25 A No, sir.

1 Q Did you keep any type of calendar?

2 A No, sir.

3 Q How would you know who you needed to go see?

4 A I would review what I needed to do either that
5 evening or that morning, made my notes, and go and
6 do what I had to do.

7 Q We've heard mention of a queue. Have you heard that
8 term before?

9 A Yes, sir.

10 Q What does that refer to?

11 A There is a -- I mean, they have a floorplan queue,
12 if there is dealers to be floorplanned that we need
13 to go and look at, or applications, if there are
14 certain points in an application we need to go and
15 check out and see what needs to be done on them.

16 Q How is that shown? Electronically?

17 A In Discover, yes, sir.

18 Q In Discover. Is that something you would view on a
19 daily basis?

20 A Yes, sir.

21 Q When you would meet with these potential customers
22 in the application process, not the contract
23 signing, but the application process, did you inform
24 those customers that DSC was going to charge
25 interest from the day of the auction, even if they